

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

MATTHEW T. FOLEY
Bar No. 023212

Respondent.

PDJ 2018-9133

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 18-0495]

FILED JANUARY 31, 2019

The Presiding Disciplinary Judge accepted the Agreement for Discipline by Consent filed on December 13, 2018.

Accordingly:

IT IS ORDERED Respondent, **Matthew T. Foley, Bar No. 023212**, is reprimanded with probation for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective the date of this order.

IT IS FURTHER ORDERED Mr. Foley shall participate in the following program:

Lawyer Regulation Office (LRO) Member Assistance Program (MAP):
Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within ten (10) days from the date of this order, to schedule an

assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent shall be responsible for any costs associated with participation with compliance.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED Mr. Foley shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,225.00, within thirty (30) days from the date of this order.

DATED this 31st day of January, 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing emailed
this 31st day of January, 2019, and
mailed February 1, 2019, to:

James J. Belanger
J. Belanger Law PLLC
PO Box 447
Tempe, Arizona 85280-0447
Email: jjb@jbelangerlaw.com
Respondent's Counsel

Kelly J. Flood
Staff Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

MATTHEW T. FOLEY,
Bar No. 023212

Respondent.

PDJ-2018-9133

**DECISION ACCEPTING
DISCIPLINE BY CONSENT**

[State Bar Nos. 18-0495]

FILED JANUARY 31, 2019

Under Rule 57(a), Ariz. R. Sup. Ct.,¹ an Agreement for Discipline by Consent (“Agreement”), was filed on December 13, 2018. Materials in Support of the Agreement for Discipline by Consent were filed on January 22, 2019 that included character references and a statement of remorse. No probable cause order has issued and no formal complaint has been filed. Mr. Foley is represented by James J. Belanger, J Belanger Law, PLLC, and the State Bar of Arizona is represented by Bar Counsel Kelly J. Flood.

Rule 57 requires admissions be tendered solely “...in exchange for the stated form of discipline....” Under that rule, the right to an adjudicatory hearing is waived only if the “...conditional admission and proposed form of discipline is approved....” If the agreement is not accepted, those conditional admissions are automatically

¹ Unless otherwise stated all Rule references are to the Ariz. R. Sup. Ct.

withdrawn and shall not be used against the parties in any subsequent proceeding. Mr. Foley has voluntarily waived the right to an adjudicatory hearing, and waived all motions, defenses, objections or requests that could be asserted upon approval of the proposed form of discipline. Pursuant to Rule 53(b)(3), the complainant received notice of this Agreement by letter dated November 20, 2018 of the opportunity to file a written objection. No objection has been filed.

The Agreement details a factual basis to support the conditional admissions. It is incorporated by this reference. Mr. Foley admits violating Supreme Court Rule 41(g) unprofessional conduct. Upon acceptance of the Agreement the parties stipulate to a reprimand and eighteen (18) months of probation with the State Bar's Member Assistance Program (MAP), and the payment of costs of \$1,200.00 within thirty (30) days from the date of this order.

In December 2017, Mr. Foley had an initial consultation with a client in a bankruptcy matter. An attorney-client relationship was established at the consultation and immediately after the consultation, Mr. Foley made inappropriate physical contact with the client. Telephonic conversations followed, and the attorney-client relationship was terminated before any services were performed and no fees were charged.

The parties agree *Standard 4.3, Failure to Avoid Conflicts of Interest* is applicable to Mr. Foley's violation of Rule 41(g). *Standard 4.32* provides that suspension is generally appropriate when a lawyer knows of a conflict of interest and

does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Standard 4.33 provides that reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interests, or whether the representation will adversely affect another client, and causes injury or potential injury to a client. The parties further agree that the presumptive sanction is between reprimand and suspension.

The parties stipulate that Mr. Foley's knowing conduct violated his duty to his client, which caused potential harm to the client. The sole aggravating factor is *Standard 9.22(i)* substantial experience in the practice of law. In mitigation, *Standards 9.32(g)* character or reputation, (l) remorse, and the prompt acceptance of responsibility are present.² The parties further stipulate that reprimand and probation are appropriate under the unique facts of this matter and that the inappropriate physical conduct did not materially affect the brief representation.

Now Therefore,

IT IS ORDERED accepting the Agreement and incorporating it with any

² The Agreement was supplemented with evidence to support this factor and Mr. Foley's remorse

supporting documents by this reference. A final judgment and order is signed this date.

DATED this 31st day of January 2019.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

COPY of the foregoing e-mailed
on this 31st day of January 2019, and
mailed February 1, 2019, to:

James J. Belanger
J Belanger Law PLLC
PO Box 447
Tempe, AZ 85280-0477
Email: jjb@belangerlaw.com
Respondent's Counsel

Kelly J. Flood
Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

by: AMcQueen

OFFICE OF THE
PRESIDING DISCIPLINARY JUDGE
SUPREME COURT OF ARIZONA

DEC 26 2018

FILED

BY _____



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Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**MATTHEW T. FOLEY
Bar No. 023212**

Respondent.

PDJ 2018

9133

State Bar File No. 18-0495

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, through undersigned Bar Counsel, and Respondent, Matthew T Foley, who is represented in this matter by counsel, James J Belanger, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was not entered, and no formal complaint

has been filed in this matter. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by letter on November 20, 2018. Complainant has been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice. Copies of Complainant's objections, if any, have been or will be provided to the presiding disciplinary judge.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 41(g), Rules of the Supreme Court. Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: Reprimand with Probation. Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk,

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on July, 15, 2005.

COUNT ONE (File no. 18-0495/ LaWall)

2. On December 6, 2017, Respondent had an initial consultation with Client A² for representation in a bankruptcy matter. An attorney-client relationship was established during the consultation.

3. At the conclusion of the consultation, before Client A left Respondent's office, Respondent engaged in inappropriate physical contact with Client A.

4. Respondent and Client A had telephonic follow-up conversations shortly after the initial consultation, and the attorney-client relationship was terminated. At the time the attorney-client relationship was terminated, Respondent had not performed any services for nor charged Client A any fees.

CONDITIONAL ADMISSIONS

the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

² The name of Client A is not being disclosed due to the nature of the charge.

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 41(g), Rules of the Supreme Court, in that he violated his duty to avoid engaging in unprofessional conduct.

RESTITUTION

Restitution is not an issue in this matter.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Reprimand and Probation (18 months with a MAP component).

If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the

imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The duty violated

As described above, Respondent's conduct violated his duty to his client.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent knowingly conducted himself as described above, and that his conduct was in violation of Rule 41(g), Rules of the Supreme Court.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was potential injury to the client.

With respect to the violation of Rule 41(g), in this context, the following *Standards* are relevant:

Standard 4.32 - Suspension is generally appropriate when a lawyer knows of a conflict of interest and does not fully disclose to a client the possible effect of that conflict, and causes injury or potential injury to a client.

Standard 4.33 – Reprimand is generally appropriate when a lawyer is negligent in determining whether the representation of a client may be materially affected by the lawyer's own interest . . . and causes injury or potential injury to a client.

Aggravating and mitigating circumstances

The presumptive sanction in this matter is between a suspension and a reprimand because while Respondent knew about the duty to avoid unprofessional conduct set forth in Rule 41(g), the inappropriate physical contact did not materially affect the brief representation which ended immediately after the initial consultation, and Respondent rendered no legal services and charged no fees to Client A. The

parties conditionally agree that the following aggravating and mitigating factors should be considered.

In aggravation:

Standard 9.22 -- Aggravating factors include:

- (i) *Substantial experience in the practice of law – admitted in 2005.*

In mitigation:

Standard 9.32 – Mitigation factors include:

- (g) character or reputation.
- (l) remorse.
- (*) prompt acceptance of responsibility

Discussion

The parties have conditionally agreed that, upon application of the aggravating and mitigating factors to the facts of this case, the presumptive sanction is appropriate. Case law also supports a reprimand under these unique circumstances.³

³ See *In re Walker*, 200 Ariz. 155, 24 P.3d 602 (Ariz. 2001)(given the extensive mitigation and the finding that the public was not in danger of Respondent re-offending, the Court held that censure (reprimand) would adequately protect the public).

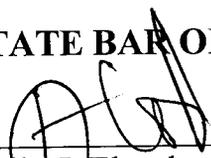
Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Reprimand with Probation (18 months, with a MAP component) and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 12th day of December, 2018.

STATE BAR OF ARIZONA



Kelly J. Flood
Staff/Bar Counsel

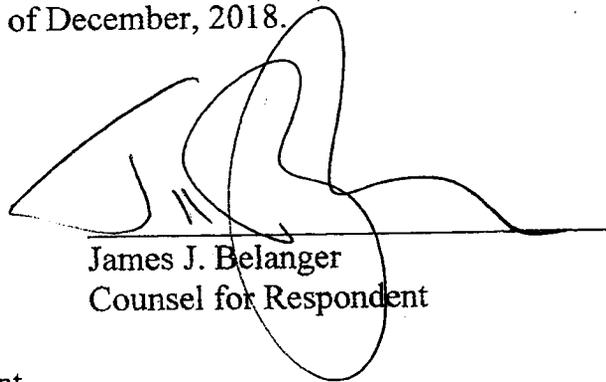
This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. [I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.]

DATED this 10th day of December, 2018.



Matthew T. Foley
Respondent

DATED this 12th day of December, 2018.



James J. Belanger
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 13th day of December, 2018.

Copy of the foregoing emailed
this 13th day of December, 2018, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 13th day of December, 2018, to:

James J. Belanger
J. Belanger Law PLLC
PO Box 447
Tempe, Arizona 85280-0447
Email: jjb@jbelangerlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 13th day of December, 2018, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: Margurita Goode
KJF/mg

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Matthew T. Foley, Bar No. 023212, Respondent

File No. 18-0495

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses **\$1,200.00**
for above-numbered proceedings

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

07/03/18	Tucson Police Department Public Records invoice	\$ 25.00
	Total for staff investigator charges	\$ 25.00
<u>TOTAL COSTS AND EXPENSES INCURRED</u>		<u>\$ 1,225.00</u>

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

**MATTHEW T. FOLEY
Bar No. 023212**

Respondent.

PDJ

**FINAL JUDGMENT AND
ORDER**

[State Bar No. 18-0495]

The Presiding Disciplinary Judge, having reviewed the Agreement for Discipline by Consent filed on _____, pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED that Respondent, **Matthew T. Foley**, is Reprimanded with Probation for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order or _____.

IT IS FURTHER ORDERED Matthew T Foley shall participate in the following program:

1. LRO MAP: Respondent shall contact the State Bar Compliance Monitor at (602) 340-7258, within 10 days from the date of service of this Order, to

schedule an assessment. The Compliance Monitor shall develop terms and conditions of participation if the results of the assessment so indicate and the terms, including reporting requirements, shall be incorporated herein. Respondent will be responsible for any costs associated with participation with compliance.

NON-COMPLIANCE LANGUAGE

In the event that Respondent fails to comply with any of the foregoing probation terms, and information thereof, is received by the State Bar of Arizona, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5), Ariz. R. Sup. Ct. The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether a term of probation has been breached and, if so, to recommend an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,225.00, within thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of December, 2018.

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of December, 2018.

Copies of the foregoing mailed/emailed
this _____ day of December, 2018, to:

James J. Belanger
J. Belanger Law PLLC
PO Box 447
Tempe, Arizona 85280-0447
Email: jjb@jbelangerlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this ____ day of December, 2018, to:

Kelly J. Flood
Staff Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
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by: _____
KJF/mg